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EXCEPTION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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IN THE MATTER OF RULES TO ADDRESS  
SLAMMING AND OTHER DECEPTIVE  
PRACTICES

Docket No. RT-00000J-99-0034

**COX ARIZONA TELCOM, L.L.C.'S EXCEPTIONS  
TO ACC SLAMMING AND CRAMMING PROPOSED RULES  
RT-00000J-99-034**

Cox has reviewed the Recommended Opinion and Order ("ROO") and is encouraged by the changes made to the marketing script submission requirements in R14-2-1914 and other changes clarifying the rules to protect Arizona consumers from the effects of slamming and cramming. There are a number of areas where the ROO differs from current Federal slamming rules, and Cox appreciates that the Commission has deliberately strengthened the protections to consumers in an effort to ensure that telecommunications providers meet with 'swift justice' when they switch a customer without authorization. Cox has no quarrel with these provisions, insofar as they are designed to quickly restore a customer to their carrier of choice and to make them whole for the costs of the switching and the rates they would have paid had they not been slammed. Cox is concerned, however, that one of the proposed rules goes far beyond these principles and would penalize innocent carriers and set up a perverse incentive for some customers to claim they were slammed in order to receive a 'windfall' beyond what they paid the unauthorized carrier.

In the ROO, R14-2-1907 C. requires an authorized carrier to flow through to the customer 150% of the amounts paid by the customer to an unauthorized carrier whenever the customer has already paid the unauthorized carrier before discovering that a slam had occurred. In contrast to ...

1 FCC rules, which are designed to make the customer “whole,”<sup>1</sup> the proposed Rule here provides to  
2 the customer a credit of an amount greater than they paid the unauthorized carrier. Since the  
3 original carrier cannot bill the customer for the calls, the effect is that a customer would receive  
4 the value of the calls made during the 90-day period for *free*, and receive a credit from their  
5 original carrier of an additional 50% of that amount. There are two fundamental problems with  
6 the rule as proposed: (i) the original carrier is denied the revenue opportunity for the calls that  
7 should have been billed at the authorized rates. This appears to be true whether or not the  
8 subscriber has paid the unauthorized carrier. And (ii) provides a potential financial windfall which  
9 may encourage some persons to ‘game the system’ by making long distance calls and later filing a  
10 slamming claim to get all their money back, plus, where they have paid the unauthorized carrier, a  
11 50% ‘bonus credit’ for ‘proving’ they were slammed.

12 The Commission should correct this problem by revising the rule to be consistent with  
13 FCC rules, with the exception of the longer 90-day absolution period as reflected in Arizona  
14 statute. To leave the rule as drafted in the *ROO* will punish authorized carriers unfairly by  
15 depriving them of the revenue opportunity for calls made by their customers, and will provide a  
16 perverse incentive, even if only to a small fraction of consumers, to game the system and receive a  
17 windfall associated with a slam allegation.

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25 <sup>1</sup> See, e.g., FCC 00-135, May 3, 2000. CC Docket no. 94-129, para. 20: “Even if such damages  
26 [150% of amounts collected] can be considered punitive, rather than purely compensatory, any punitive  
27 aspect arises from the specific statutory provision providing that the authorized carrier is entitled to  
amounts over and above what it would have collected if the slam had not occurred. The amount going to  
the subscriber, on the other hand, is no more than compensatory, and well within the range of relief  
authorized in other statutory provisions.

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1 RESPECTFULLY SUBMITTED October 17, 2002.

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